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ATTORNEYS FOR FEDERAL
TRADE COMMISSION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE BILLING RESOURCE d/b/a INTEGRETTEL,)	
)	No. 5:07-CIV-5758-RMW
Debtor-Plaintiff-Appellee,)	
)	Date: December 21, 2007
v.)	(Requested Date)
)	Time: 9:00 a.m.
FEDERAL TRADE COMMISSION et al.,)	Place: 280 S. First Street
)	San Jose, CA
Defendant-Appellant.)	Judge: Hon. Ronald M. Whyte
)	Courtroom: 6 - 4th Floor

On Appeal from the United States Bankruptcy Court for the Northern District
of California, No. 07-52890, Adversary Proceeding No. 07-5156 (Weissbrodt)

**DEFENDANT-APPELLANT FEDERAL TRADE COMMISSION'S N.D. CAL. L.R. 6 AND
FED. R. BANKR. P. 9006 MOTION TO SHORTEN BRIEFING SCHEDULE AND
ACCELERATE HEARING DATE FOR ITS MOTION FOR STAY PENDING APPEAL OF
THE BANKRUPTCY COURT'S NOVEMBER 27, 2007, PRELIMINARY INJUNCTION**

1 Defendant-appellant the Federal Trade Commission ("Commission"), pursuant to N.D. Cal.
2 L.R. 6 and Fed. R. Bankr. P. 9006, hereby moves to shorten the briefing schedule and accelerate the
3 hearing date to December 21, 2007, for its motion for stay pending appeal of the bankruptcy court's
4 November 27, 2007, preliminary injunction. This is the same date that this Court has calendared a
5 hearing for the Commission's motion for a stay pending appeal of the bankruptcy court's October 17,
6 2007 preliminary injunction and its motion for a change of venue. The Commission believes that
7 significant judicial economy will result from a combined of these three interrelated motions. In support
8 of its motion, the Commission states the following:
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11 1. Debtor-plaintiff-appellee The Business Resource dba Integretel ("Integretel") is a
12 defendant in a civil law enforcement action pending in the United States District Court for the Southern
13 District of Florida (the "Florida District Court"), *FTC v. Nationwide Connections, Inc.*, No. 06-CV-
14 80180-Ryskamp/Vitunac (S.D. Fla.) (the "Enforcement Action"). Integretel was an instrumental player
15 in a telephone billing "cramming" scheme that bilked consumers over \$30 million for bogus long
16 distance charges. Integretel aggregated approximately \$5 million of these charges and placed them on
17 consumers' monthly telephone bills.
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20 2. In a September 14, 2007, Order ("September 14 Order"), the Florida District Court held
21 that: (1) approximately \$1.7 million (the "Reserve Funds") are the property of a receivership estate
22 created in Enforcement Action (and *not* Integretel); (2) Integretel should have turned the Reserve Funds
23 over to the Receiver in March 2006 pursuant to the turnover provisions of a temporary restraining order
24 (and subsequent injunctions) issued by the Florida District Court; and (3) Integretel was required,
25 within ten days, to either turn over these funds to a Receiver appointed by the Florida District Court or
26 show cause why it should not be held in contempt. Entered *prior* to Integretel's bankruptcy petition, the
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1 September 14 Order conclusively determined that the Reserve Funds are the property of the
2 receivership estate (*not* the property of Integretel) and are to be under the direct control of the Receiver.
3 A September 21, 2007 Order by the Florida District Court reiterated these findings and held that, as the
4 property of the receivership estate, the Reserve Funds are not the property of Integretel's bankruptcy
5 estate.
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7 3. The Commission and the Receiver have been enjoined by pursuing this contempt
8 proceeding since October 17, 2007, when the Eleventh Circuit temporarily granted Integretel's motion
9 for a stay pending appeal of the September 14 Order. On November 5, 2007, the Eleventh Circuit
10 denied Integretel's motion on the merits and terminated the temporary stay. At the request of Integretel,
11 within 3.5 *hours* of the Eleventh's termination of the stay, the bankruptcy court conducted an
12 emergency telephonic hearing and entered a temporary restraining order enjoining the Commission and
13 the Receiver from pursuing the contempt proceeding that a unanimous panel of three Circuit Court
14 judges had just permitted to go forward. The November 27, 2007, preliminary injunction that is the
15 subject of this appeal followed, extended the injunctive provisions of the temporary restraining order
16 through March 14, 2007.
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20 4. The bankruptcy court's October 17, 2007, preliminary injunction enjoins the
21 Commission from pursuing its Enforcement Action against Integretel. This injunction is at odds with
22 the Florida District Court's September 21 Order that the Enforcement Action and contempt proceeding
23 are not stayed by Integretel's bankruptcy. It also is at odds with the Congressional mandate embodied
24 in 11 U.S.C. § 362(b)(4), that consumer protection law enforcement proceedings (and ancillary
25 proceedings like the contempt proceeding) have a special priority and should not be impeded or
26 delayed by a defendant in an enforcement action filing for bankruptcy. It also violates the rule that
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1 bankruptcy courts should enjoin law enforcement actions only the most exceptional circumstances.

2 5. As this motion and the Commission's simultaneously filed memorandum in support of
3 its motion for a stay pending appeal indicate, this motion and the other pending stay motion both arise
4 from a common nucleus of facts and the September 14 and 21, 2007, Orders of the Florida District
5 Court and the November 5, 2007, Order of the Eleventh Circuit, and the contradictory decisions by the
6 bankruptcy court in its October 17 and November 27 Orders. Rather than having to address the many
7 common issues twice, the Commission believes that it would be in the interests of judicial economy to
8 accelerate the briefing schedule and the hearing modestly so that all of these issues can be considered in
9 a single hearing.
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11 6. The Commission's change of venue motion is fully interrelated to its two stay motions.
12 The United States District Court issued the September 14 and 21 Orders. It is the only court that can
13 exercise jurisdiction over both this adversary proceeding and the Enforcement Action and thereby
14 assure consistent rulings between these proceedings. A prompt transfer to the Southern District of
15 Florida could even obviate the need for this Court to resolve the two pending stay motions, deferring
16 these decisions to the transferee court which already is intimately familiar with this proceeding, having
17 presided over the Enforcement Action since February 2006.
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19 7. Absent the requested Order, the earliest possible hearing date would be January 4, 2008,
20 making oppositions to the Commission's motion due on December 14, 2007, N.D. Cal. L.R. 7-3(a), and
21 the Commission's reply brief due on December 21, 2007, N.D. Cal. L.R. 7-3(c). The Commission
22 requests that the opposition deadline be moved up four days to December 10 and that its reply be
23 moved a up week, to December 14. While this would complete briefing only one week prior to the
24 hearing, the Commission respectfully submits that the significant judicial economy that would result
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1 from all three of the Commission's motions being considered in a single hearing.


2 10. The Commission, therefore, moves that:

- 3 a. All oppositions to the Commission's motion for stay pending appeal of the
4 bankruptcy court's November 27, 2007, preliminary injunction be filed and
5 served not later than December 10, 2007;
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7 b. The Commission be required to file and serve its reply, if any, by December 14,
8 2007;
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10 c. Service may be made electronically; and
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12 c. The Hearing on this motion be heard on December 21, 2007, along with the
13 Commission's requested hearing on its stay motion concerning the bankruptcy
14 court's October 17, 2007, preliminary injunction and its change of venue motion.

15 Respectfully submitted,

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